



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
On June 16, 2003_____

Date of Meeting: January 13, 2003

The Mayor and Council of the city of Tucson met in regular session, in the Mayor and Council Chambers in City Hall, 255 West Alameda, Tucson, Arizona, at 7:35 p.m., on Monday, January 13, 2003, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup, and upon roll call those present and absent were:

Present:

José J. Ibarra
Carol W. West
Kathleen Dunbar
Shirley C. Scott
Steve Leal
Fred Ronstadt
Robert E. Walkup
Kathleen S. Detrick

Council Member Ward 1 (arr. 7:40 p.m.)
Council Member Ward 2
Council Member Ward 3
Vice Mayor Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor
City Clerk

Absent/Excused:

None

Staff Members Present:

James Keene
Mike Letcher
Ernie Duarte

City Manager
Deputy City Manager
Director Development Services

Michael House
Frank Cassidy

City Attorney
Principal Assistant City Attorney

Debra Armenta
Nora Dunn
Dana DeLong

City Clerk's Office
Recording Secretary
Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Pastor Roger Stogsdill, First Brethren Church, after which the pledge of allegiance was presented by the entire assembly.

Presentation

Mayor Walkup proclaimed Monday, January 13, 2003, to be Martin Luther King Jr. Day. Ray Davies, Tucson Human Relations Commission, accepted the proclamation.

Mr. Davies said the commission was grateful for the council's support and invited them to a reception on January 16, at the Radisson Hotel, to be followed by a lecture by the former Ambassador to Mexico, Dr. Julian Nava, at the Leo Rich Theater.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 32, dated January 13, 2003, would be received into and made a part of the record. He also announced that this was the time for council members to report on current events and asked if there were any reports.

A. Town Hall

Council Member West invited the public to attend a town hall meeting on the budget on January 14, at 7575 E. Speedway. Other meetings would be scheduled. She asked Council Member Ronstadt to comment.

Council Member Ronstadt said the meeting would be broadcast on Cox Cable, Channel 74. A large crowd was expected, as other budget meetings had been well attended, and people had great ideas regarding what could be done to cut costs.

B. Traffic Improvements

Council Member Ronstadt said he was getting a haircut recently at the Hermosa Barber Shop at Grant and Campbell and his barber had nothing but praise for city staff in regards to the traffic improvements in that area. Staff had communicated well with business owners and traffic seemed to be flowing with no backups or problems. His barber was very pleased with the city.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 33, dated January 13, 2003, would be received into and made a part of the record. He asked for the city manager's report.

A. HUD Grant for the Homeless

James Keene, city manager, congratulated the community services staff and other people involved with the city's submission to the Department of Housing and Urban Development for a grant for the homeless. The city of Tucson took the lead in developing

the application for the greater Tucson area and fared very well, receiving a total of \$4.3 million, which is significantly more than the area's calculated share. Four new projects were funded and two city projects received renewal funding, totaling \$1.5 million.

B. Homage Exhibit to Father Kino

Mr. Keene announced that a descendant of Father Kino would highlight the Homage Exhibit to Father Kino and his travels, featuring the only United States showing of mixed media art, which will be on display in Tucson through January 31, 2003.

C. Diamondback Bridge

Mr. Keene said the Diamondback Bridge has been honored with the Associated General Contractors' of America, Arizona Chapter Award with its "2002 Build Arizona Award", marking it as one of the best municipal utility construction projects in Arizona. The award is based on the project's innovation and construction technique and materials, as well as its sensitivity to the environment and surrounding area.

D. Martin Luther King, Jr.

In addition to the Tucson Human Relations' event on January 16, there will be live entertainment by the National Guard Armory at 1750 E. Silverlake Drive.

E. National League of Cities

Mr. Keene said the mayor of New Haven, Connecticut, who is the president of the National League of Cities, recently appointed Vice Mayor Scott to serve as vice chair of the 2003 National League of Cities Community and Economic Development Steering Committee. As the council knows, Vice Mayor Scott has been an active member of the committee since 1997 and a goal of the committee is to conserve and improve the physical, economic, cultural and social conditions and opportunities the community affords its residents. The National League of Cities is the premier organization representing state municipal leagues and the elected leaders of 1,700 member cities and Vice Mayor Scott is the first woman from the state of Arizona to hold such a position.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

C. Congratulations to City Staff

Mayor Walkup extended his congratulations to the manager and city staff for their efforts in bringing Hamilton Aviation, with 200 jobs, and Geico, initially 400 jobs, to the city. He thanked Kendall Bert and his staff for a superior job in assisting other areas of the city. Hamilton Aviation and Geico are two very large and important economic development wins for the city.

5. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue that was not on the agenda. He had received four written requests from people who wanted to talk about an item that was

on the agenda and said he could not allow that. Those people would be allowed to speak at the end of the meeting. He had received one request from a person who wished to talk about an item that was not on the agenda and a request from one person who wanted to speak about two items. He reiterated that the council would adhere to its principles and rules that speakers could not comment on items that are on the agenda under call to the audience. Speakers would be allowed three minutes for their presentations and this item would be allotted twenty minutes.

A. Parks and Recreation Department Fee Waivers

Myra Jones, said she wanted to address the issue of parks and recreation department fee waivers and discounts for 2002, nonprofits, businesses and antique fairs. She said she is not a business owner or a partner of Dan Wicker (ph) as inferred in a letter to the mayor and council from Judith Murphy Bossnos (ph) owner of Pink Porch Antiques, dated January 3, 2003. However, if she were she would still have the right, maybe more so, to make a request for fee waivers. She is not engaged in business nor is she a business partner with the city of Tucson or any government official in the city. She was not looking to secure a business deal with the city of Tucson for years to come. She said is an activist, a well-known activist, and she was going to be at the council meetings to observe discussions on several issues. She said she pays her own way and she carries her own weight. She does not know anything about a lawsuit or restraining orders as stated by Ms. Bossnos in her letter. She knows about it now, but she did not know about it at the time. Ms. Jones said she would again request the fee waivers or discounts for the year 2002 nonprofits, businesses, and antique fairs.

Mayor Walkup asked if anyone else wished to comment.

B. Consent Agenda – Item E

Elezabeth Cameron, said she had a document that the Architectural Barrier Action League had worked for hours and months developing. It was a spay/neuter proposal, 132 pages. In 1998, her group asked the council not to pass an ordinance and since then, they had come up with the proposal of San Mateo County's legislative failure. It was what she was using for a gauge, asking the council to please repeal the law and reevaluate it. What the city really needs instead of that law is a nuisance animal ordinance and she gave a copy to Vice Mayor Scott and Council Member Ibarra. She asked that it be put on a council agenda for discussion because the current situation has dogs running loose and attacking people who cannot defend themselves, mostly the disabled and children.

She has a neighbor who simply gets a new dog every time he gets caught with one and lets it loose to breed in the city, get hit by cars and cause car accidents. That is because of the failure of the mayor in 1998 to recognize the problems that getting money and keeping people from taking care of their responsibilities have led to. Those were all things she predicted. She even had newspaper articles from other citizens from that time saying it was going to be a failure and everything they asked or said would be a failure was and has come to pass.

She asked the council to schedule the issue for discussion. She was sure there were members outside of the disabled community that would like to speak on this subject

also. She asked the council to resume publishing its agenda in the Sunday newspaper so that they will know when it comes up.

Mayor Walkup asked if anyone else wished to address the council.

C. Animal Control

Mardi Hadfield, said the dog that was with her was new. She had had the dog for three days. Yesterday, she went home, passing the same house that had the pit bull that disabled her other dog. She had not seen that dog in months. She has gone by that house, in her wheelchair, several times during the past months and had never even seen the dog. She thought they had gotten rid of it. Last night, as she was going home the same dog jumped the fence and came after her dog. She picked up her white cane and threatened to hit it and it jumped back over the fence again. She said her new dog is very expensive. She does not qualify for a guide dog because she uses a wheelchair. The dogs cost a lot to train and her new dog was not cheap. Something has to be done about the dogs because no one is doing anything. When she called her council member she was told the mayor and council do not care, nobody cares. She said someone had better start caring. Her new dog cost \$30,000 and someone was going to pay for it.

Mayor Walkup asked if anyone else wished to address the council. There was no one.

6. CONSENT AGENDA – ITEMS A THROUGH E

Mayor Walkup announced that the reports and recommendations from the city manager on the consent agenda items would be received into and made a part of the record. He asked the city clerk to read the consent agenda items.

A. FINANCE: CONTINGENCY FUND TRANSFER FOR FAMILY ARTS FESTIVAL

- (1) Report from City Manager JAN12-03-29 CITY-WIDE
- (2) Resolution No. 19477 relating to finance; approving and authorizing the transfer of Three Thousand Dollars (\$3,000.00) from the contingency fund to organization 001-183-1838-268, for Family Arts Festival; and declaring an emergency.

B. GRANT: ACCEPTANCE OF GRANT FUNDS FROM THE STATE HISTORIC PRESERVATION OFFICE FOR COMPLETION OF A NOMINATION TO THE NATIONAL REGISTER OF HISTORIC PLACES FOR THE WINTERHAVEN NEIGHBORHOOD

- (1) Report from City Manager JAN13-03-27 WILL
- (2) Resolution No. 19478 relating to Historic Preservation; approving and authorizing the acceptance of the grant funds from the State Historic Preservation Office for National Register Nomination Project in Winterhaven; and declaring an emergency.

C. REAL PROPERTY: ACQUISITION OF PROPERTY NEAR THORNYDALE AND MAGEE ROADS FOR A POTABLE WATER SUPPLY WELL

- (1) Report from City Manager JAN13-03-28 OUTSIDE THE CITY
- (2) Resolution No. 19479 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain real property in the vicinity of Thornydale and Magee Roads for a potable water supply well; and declaring an emergency.

* D. FINANCE: SALE OF JUNIOR LIEN HIGHWAY USER REVENUE REFUNDING BONDS, SERIES 2003 (A) (CONTINUED FROM MEETING OF JANUARY6, 2003)

- (1) Report from City Manager JAN13-03-24 CITY-WIDE

** E. TUCSON CODE: AMENDING (CHAPTER 4) RELATING TO ANIMALS AND FOWL; REVISING THE NOTICE AND PROCEDURES FOR TAKING AND DESTROYING DANGEROUS VICIOUS OR DESTRUCTIVE ANIMALS (CONTINUED FROM THE MEETING OF DECEMBER 16, 2002)

- (1) Report from City Manager JAN13-03-34 CITY-WIDE
- (2) Ordinance No. 9804 relating to animals and fowl; amending procedures to remove and forfeit animals; increasing notice requirements prior to hearing; providing for disclosure of evidence; amending impound fee requirements; requiring written findings by magistrate; increasing notice requirements and providing for disclosure prior to dangerousness hearing; making conforming revisions; by amending Chapter 4, Article 1, Sections 4-11, 4-13 and 4-7; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member West, seconded by Council Member Leal, that consent agenda items A through C, with the exception of items D and E, be passed and adopted and the proper action taken.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

* Continued to January 27, 2003 at the request of staff

** See page 7

Consent agenda items A through C, with the exception of items D and E, were declared passed and adopted by a roll call vote of 7 to 0.

6. CONSENT AGENDA – ITEM E

- E. TUCSON CODE: AMENDING (CHAPTER 4) RELATING TO ANIMALS AND FOWL; REVISING THE NOTICE AND PROCEDURES FOR TAKING AND DESTROYING DANGEROUS VICIOUS OR DESTRUCTIVE ANIMALS (CONTINUED FROM THE MEETING OF DECEMBER 16, 2002)

Ordinance No. 9804

Relating to animals and fowl; amending procedures to remove and forfeit animals; increasing notice requirements prior to hearing; providing for disclosure of evidence; amending impound fee requirements; requiring written findings by magistrate; increasing notice requirements and providing for disclosure prior to dangerousness hearing; making conforming revisions; by amending Chapter 4, Article 1, Sections 4-11, 4-13 and 4-7; and declaring an emergency.

Kathleen S. Detrick, city clerk, said she had several technical corrections to read into the record. The first was to conform with state law and revised Sections 4-11(A)(4)(a), and Section 4-13(B)(2)(a), to read, "Provide the name of any victim and the names and address and telephone numbers of any other witnesses the party plans to call at the hearing with a fair description of the substance of each witness's expected testimony." The second technical correction was to add a new Section 4-11(E), and then renumber the remaining sections and affected cross references to read, "The hearing shall be conducted pursuant to the city of Tucson local rules of practice and procedure and city court civil proceedings except that the more specific requirements of this section shall apply in the case of conflicting provisions." The final technical correction was to increase each of the maximum one thousand dollar (\$1,000) fines in Section 4-13(H)(1)(2), and (3), to two thousand five hundred dollars (\$2,500) in order to conform to the general \$2,500 maximum fine that is set forth in the *Tucson Code*, Section 1-8. She reiterated that the changes were technical corrections.

Mayor Walkup asked the council's pleasure.

Council Member Dunbar thanked Mr. Cassidy for his work on this item and said the corrections had been coming in. She had to thank Jane Schwerin, who had worked very hard on this issue. Council Member Dunbar wanted to explain exactly what the council was doing. They were clarifying the law; not making any changes to the current law whatsoever. The proposed ordinance ensures that animal owners are notified of the possible destruction of their animal. People go to city court because of a violation, but they have no idea at that point that their dog may be confiscated and killed. The proposed ordinance would ensure due process and she wanted to share a personal story that summed up the whole issue.

About ten years ago, she was running one of her animals off leash and it ran up to a man on a bicycle and when she got there he said her dog had bitten him. She asked him where because there were no marks, no torn clothes, nothing. She got to city court and photographs were presented of the man's posterior showing bites and black and blue marks. She had had no idea of that and she asked the judge how could they know the photos were of the man who said he was bitten. The judge asked her if she was saying the man was lying and she asked if the judge was saying she was lying. It was a situation where she had no information of what she was going to say when she got to city court.

The proposed ordinance ensures that if a person is charged with a dog bite, ten days prior to the court appearance they will have everything they are going to be prosecuted with in court and it is up to the person at that point to determine whether they want to hire an attorney to take with them. The council was doing nothing to change the current law, the proposed ordinance is a due process issue, and it comes up often. The ordinance did not change anything regarding people being attacked by dogs or how that process will go. They were not trying to weigh in on bite issues, they were just giving due process, and a lot of technical changes were being made, making things conform.

She thanked Ms. Schwerin for that because she found all kinds of technical errors and some spelling mistakes. The proposed ordinance just cleaned up the language. If the council was doing anything that changed the law they would hold public hearings, study committees and get a lot of people involved. She thanked the Humane Society and said animal control had gone over the ordinance and she thought everyone was in agreement and the corrections were actually something that had needed to be done for a long time.

It was moved by Council Member Dunbar, seconded by Council Member Leal, that ordinance no. 9804, with the technical corrections read by the city clerk, be passed and adopted.

Mayor Walkup asked if there was any discussion.

Council Member West said she planned to support the proposed ordinance, she thought it was a good one, but she felt there needed to be clarification of just what it is about because she has had some calls from people. She believes in due process and she thinks the proposed ordinance improved that, but she wanted to know what would happen if the owner was not found.

Frank Cassidy, principal assistant city attorney, said in that instance the dog would be treated as an abandoned dog and there is a separate provision in the code that deals with that situation.

Council Member West asked if the proposed ordinance increased the liability of the city in any way.

Mr. Cassidy said it did not change the current process. The same vicious animal provisions, the same administrative procedure for dangerous animals, will apply in city court. The length of time has been stretched out just a little to give more due process, but the time when the animal would have been taken into custody before adoption of the proposed ordinance remains the same. There was no opportunity for more liability.

Council Member West said she understood that the costs that might be incurred because of the additional time span would be covered by the bond that is posted by the animal owner, so there were no additional financial considerations.

Mr. Cassidy said that was correct. However, if the time frame ends up being a little longer, which it will because of the disclosure, and if the city eventually loses the case, there would be a little more time that the city would end up covering since the bond would be returned to the owner. He said there is some minor financial impact.

Council Member West called the question.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9804, including the technical corrections, was declared passed and adopted by a roll call vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 26, dated January 13, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) New License(s)

- | | | |
|-----|--|---|
| (1) | CHEVRON FOOD MART
3215 N. Swan Road
Applicant: John W. Webster
City #106-02, located in Ward 2
Series #10
Action must be taken by: January 31, 2003 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| (2) | ARIZONA ALE HOUSE
95 W. River Road
Applicant: Ricky D. Cook
City #108-02, located in Ward 3
Series #12
Action must be taken by: February 1, 2003 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| * | (3) FIREFLY FOOD 7 SPIRITS
509 N. 4 th Avenue
Applicant: Sharon A. Ludwig | <u>Staff Recommendation</u>

Police: In Compliance |

*See page 11

City #104-02, located in Ward 6
Series #12
Action must be taken by: January 25, 2003
Public Opinion: Protests Filed
(continued from the meeting of January 6, 2003)

DSD: In Compliance
Bus. License: In Compliance

Person Transfer(s)

- (4) GALO'S
7854 E. Wrightstown Road
Applicant: Robbi T. Hurtado
City #107-02, located in Ward 2
Series #7
Action must be taken by January 31, 2003

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Business License: In Compliance

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- (5) CHINATOWN BUFFET
5005 S. Campbell Avenue
Applicant: Junting Lei
City #105-02
Series #7
Action must be taken by: January 31, 2003

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Business License: In Compliance

(c) Special Event(s)

- (1) BIG BROTHERS BIG SISTERS OF TUCSON
134 S. Fifth Avenue
Applicant: Kelly D. Balthazor
City #T107-02, located in Ward 6
Date of Event: February 28, 2003

Staff Recommendation

Police: In Compliance
DSD: In Compliance

8900 Extension of premises

- (1) MUSIC BOX LOUNGE
6941 E. 22nd Street
Applicant: Darel D. Harrison
City #EP57-02, located in Ward 4
Type: Permanent

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance

- (2) ROLLING HILLS GOLF COURSE
8900 E. 29th Street
Applicant: Wayne A. Braastad
City #EP60-02, located in Ward 4
Type: Permanent

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance

It was moved by Council Member Dunbar, seconded by Vice Mayor Scott, and carried by a voice vote of 7 to 0, to forward liquor license applications city #106-02; city #108-02; city #107-02; city #T107-02; city #EP57-02; and city #EP60-02, to the state department of liquor licenses and control with a recommendation of approval.

*See page 11

7. LIQUOR LICENSE APPLICATIONS - (b)(3)

(b) New License(s)

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|---|--|
| <p>(3) FIREFLY FOOD & SPIRITS
509 N. 4th Avenue
Applicant: Ricky D. Cook
City#104-02, located in Ward 6
Series #12
Action must be taken by January 25, 2003
Public Opinion: Protests Filed
(continued from the meeting of January 6, 2003)</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance</p> |
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Mayor Walkup asked the council's pleasure.

Council Member Ronstadt said the proprietor of the Firefly met with representatives from the Ironhorse Neighborhood Association last week and wrote a letter indicating that they are moving to a neutral position, which is the best that can be gotten from them on a liquor license. He noted that the application is for a series 12, which is a restaurant license, and something that West University and other neighborhoods in the area have been encouraging on Fourth Avenue.

It was moved by Council Member Ronstadt, seconded by Council Member Leal, and carried by a voice vote of 7 to 0, to forward the liquor license application for the Firefly Food & Spirits, city #104-02 to the state department of liquor licenses and control with a recommendation for approval.

7. LIQUOR LICENSE APPLICATIONS - (b)(5)

(b) Location Transfer(s)

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| <p>(5) CHINATOWN BUFFET
5005 S. Campbell Avenue
Applicant: Junting Lei
City #105-02, located in Ward 5
Series #7
Action must be taken by: January 31, 2003</p> | <p><u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance</p> |
|--|--|

Kathleen S. Detrick, city clerk, reported that the final item to be considered separately was a location transfer, item 7(b)(5). The staff recommendation was for approval, however, a request to speak in opposition to this application was received. This license is located in ward five.

Mayor Walkup recognized Council Member Leal.

Council Member Leal asked the representative from the Sunnyside Neighborhood Association to address the mayor and council on their protest and then he would ask the applicant to address them.

Yolanda Herrera LaFond, President of the Sunnyside Neighborhood Association, said this association bordered both wards one and five, and thirty-five households. She was before the mayor and council because she had not been notified that the license was moving forward so no protest letter was previously filed.

The Sunnyside Neighborhood Association had come before the mayor and council eighteen months ago to protest a charter school across the street from this location and they were told they could not protest that because it was not up and running, which she understood. The concerns were going to be almost the same because this area is actually a high stress area. Well over 50,000 vehicles go through the intersection on any given day, therefore, traffic is a concern. The neighborhoods that are in the closest proximity to the liquor license are either inactive or are not fully organized. She was at the mayor and council meeting because her association protested the charter school. She had not heard about this liquor license application until Thursday.

Ms. LaFond indicated she wanted to read something to the mayor and council so they would understand why she was protesting. She continued that a series #12, which is a restaurant license, has a lot of restrictions attached to it when it comes to serving a neighborhood. A series #12 allows the holder of a restaurant license to sell and serve spirituous liquor solely for the consumption on the premise of an establishment, which derives at least forty percent of its gross revenue from sale of food. Everybody knows that area is totally saturated with all different types of liquor licenses. The neighborhood has, on three of the major intersections, grocery stores that already sell packaged goods. A series #6 bar license allows a bar retailer to sell and serve spirituous liquors primarily by individual portions to be consumed on premise and in the original container for consumption on or off the premise.

A series #7 was before the mayor and council and Ms. LaFond wanted to find out the difference between a series #6 and series #7. The purpose of a series #7 allows a beer and wine bar retailer to sell and serve beer and wine primarily for individual portions to be consumed on the premise and in the original container for consumption on or off the premise, so the wording is almost equal to a bar. Should this establishment, which is a restaurant—and she was somewhat concerned that they were not coming before the mayor and council as a restaurant, series #12—that area has had many, many problems with Famous Sam's which has come to terms with the neighborhood. They have cleaned up their act, so this neighborhood did not need another repetitious item stressing their already stressed city resources. For those reasons, Ms. LaFond did not feel that the needs and convenience of the community would be better served by requesting this application. She asked that the mayor and council deny this license on behalf of the community.

Council Member Leal asked if the applicant was present. No one came forward. Council Member Leal thought that Ms. LaFond had laid out the pertinent issues, one of concentration, one of stress in the area, one of the particular kind of license being asked for, staying and not leaving when the establishment may terminate, that convenience is not created by their presence. Council Member Leal thought for those reasons, which are significant, the mayor and council should vote to send a recommendation of denial to the state liquor board.

It was moved by Council Member Leal, seconded by Council Member West, that liquor license application 7(b)(5), city no. 105-02, be forwarded to the state liquor board with a recommendation for denial.

The motion carried by a voice vote of 6 to 0, (Council Member Ronstadt temporarily absent/excused).

8. ZONING: (C9-02-23) LEVIS/SUTTON – CAMP LOWELL DRIVE, SR/RX-1 TO C-1; CITY MANAGER’S REPORT

Kathleen S. Detrick, city clerk, advised that the applicant had submitted a written request that this item be continued.

It was moved by Council Member West, seconded by Council Member Leal, and carried by a voice vote of 7 to 0, to continue this item to the mayor and council meeting of January 27, 2003.

9. ZONING: (C9-02-17) BROWN – CAMINO SECO, SR TO R-2; CITY MANAGER’S REPORT

Mayor Walkup announced that city manager’s communication number 31, dated January 13, 2003, would be received into and made a part of the record. He also announced that this was a request to relocate property located south of Golf Links Road, between Camino Seco and the Pantano Wash. The preliminary development plan is for single family residences. The zoning examiner and city manager recommend approval of R-1 zoning in lieu of R-2 zoning, subject to certain standard conditions. He asked if the applicant or a representative was present and if so, were they aware of and amenable to the city manager’s recommended conditions.

Ann Warner, said they were.

Mayor Walkup asked the council’s pleasure.

It was moved by Vice Mayor Scott, seconded by Council Member West, and carried by a voice vote of 7 to 0, that in zoning case C9-02-17, staff be directed to prepare an ordinance rezoning the subject property from SR to R-2, subject to the standard conditions recommended by the city manager.

10. WATER: NOTICE OF INTENTION TO IMPLEMENT WATER “SYSTEM EQUITY” FEE AND SCHEDULING A PUBLIC HEARING FOR MARCH 17, 2003

Mayor Walkup announced that city manager’s communication number 35, dated January 13, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19480 by number and title only.

Resolution No. 19480

Relating to water; authorizing the adoption of a Notice of Intention to implement a water “system equity” fee; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Vice Mayor Scott, seconded by Council Member Leal, that resolution no. 19480 be passed and adopted, that staff be directed to file a report on the proposed rate changes in the office of the city clerk, and set March 17, 2003 for the public hearing regarding the rate change.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution no. 19480 was declared passed and adopted by a roll call vote of 7 to 0.

11. PUBLIC HEARING: PROPOSED REVISIONS TO THE "TUCSON SIGN CODE" (TUCSON CODE CHAPTER 3)

Mayor Walkup announced that city manager's communication number 36, dated January 13, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing on proposed amendments to the *Tucson Sign Code* and asked for staff's presentation.

Ernie Duarte, director of development services, said the proposal before the council was to amend the *Sign Code* in four specific areas. The first added a section to the code that would allow an electronic message board and video screen to be displayed at a public or private multi-purpose facility within the Rio Nuevo District, primarily in and around ticket and pedestrian areas. The section further stipulated that the message boards not create a traffic hazard and not be visible, or only incidentally visible, from public rights-of-way and adjacent properties. The second amendment was a result of staff's continued efforts to enforce and administer the *Sign Code* in the area of political signs. Under the proposal the allowable size of a political sign in a business district would be reduced from 50 feet to 16 square feet and the allowable maximum height would be reduced from 10 feet to 5 feet in both the residential and business districts. Amendment number three, the model home display package, would allow for the installation of up to four flag poles, 21 feet high, displaying home building advertising flags within new residential subdivisions. This type of package is currently not allowed in Tucson, but it is allowed in surrounding communities.

Residential projects having frontage on scenic corridors would not be allowed to have the model home display package if the mayor and council adopted the amendment. Finally, amendment number four would create a *Sign Code* exemption for individual property owners who want to place a "for sale or for rent" sign in their front yard. He said there were two scenarios for that particular amendment. One would create an exemption for individual property owners placing "for sale by owner" signs in their front yards. The

other would create an exemption for an individual owner who resides in one unit of a duplex, triplex, up to four units, to place a "for rent or for sale" sign in their front yard. Staff recommended the adoption of the latter.

Mr. Duarte said all four of the code amendments were subject of public hearings before the citizens sign code committee. The sign code committee endorses the amendments. Additionally, amendment number one relating to the electronic message boards has been reviewed and endorsed by the mayor and council rio nuevo downtown subcommittee. Staff recommended approval of all amendments with the exception of the model home display package. Staff recommended that the amendment should be remanded to the sign code committee for additional information and clarification.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour, speakers would be limited to five-minute presentations, and he would call on speakers in the order that he received their written requests to speak.

Benny White, said this was the second time he had had the opportunity to address the council on political signs. He asked them to vote no on proposed ordinance no. 9806 and said that after the council meeting in September, when the council asked the sign code committee to address this issue, he went to the committee to talk about what he felt were various unconstitutional aspects of the *Sign Code*. He asked the committee members to tell him if they had ever received any complaints from anyone in the city about the size or height of signs and there was no response. He asked the city attorney who was at the meeting, Frank Cassidy, if he could cite one trial, one court decision in the United States where the court upheld that a city/county municipality had been granted the authority to regulate the size or height of political signs. There was no such citation given.

Michael House, city attorney, responded to the council's question at its September meeting that there is a case where the Supreme Court in a certification opinion said that cities and counties had the right to regulate the size of signs. However, the court did not say that they had the right to regulate the size of political signs, and that was the issue before the council. The proposal before the council was unequal treatment under the law as well. As a residential property owner, he would be allowed to have an eight square foot sign. If he owned a piece of commercial property he would be able to have a 16 square foot sign. Depending on the issue before the citizens at that time that is not equal representations and not an equal voice in the political process. He reiterated that the ordinance before the council was flawed and asked that they vote no.

Jack Fitzgerald, said he is a member of the *Tucson Sign Code Committee* and has been a user of signs for almost 40 years. He wanted to bring a little history to the issue of the electronic message center. He believes in electronic message centers. His store, formerly at Campbell Avenue, had a rotating sign with bouncing balls, a beacon on top, and a flashing neon sign. That was called an animated sign and he installed it in about 1962. Through the years, there were several such signs, Wally Sevitz had bouncing balls, and the Lucky Wishbone had flashing strobes. Most of those signs are gone, except for Lucky Wishbone.

About 20 years ago, during Mr. Miller's regime, the *Sign Code* became very restrictive and all animated signs and electronic message centers were eliminated. At

that time, he argued vociferously against doing away with electronic message centers because the computer age was just beginning. Now it is 20 years later and the city of Tucson for the Rio Nuevo project realizes the importance of electronic message centers. He thinks it is a great idea, but it violates everything in the code. It allows government to do everything it wants to do and private enterprise is left out.

He urged the council not to pass the proposal, to send it back to the sign code committee and let them work on it so that small businesses can use it also. This is the 21st Century, electronic message centers and LEDs are very important. With the video and electronic message centers coming forth the council cannot deny private enterprise from using what they see as something very important. The council did not even need to send that issue to the sign code committee. It can do whatever it wants with four votes.

Mr. Fitzgerald knows that the city of Tucson needs a new city hall and with four votes, the council could put one on property that is protected by the slope ordinance if it wanted. In the wash zones, the council could cut down every bush it wanted to. All it needs is four votes and the members know that. All he was saying was that they should be fair to the business community and kick that revision back to the sign code committee so they can work out something for the entire city and the government, so that everyone can enjoy the benefits.

Judi White, said political signs and the personal expression of political opinion are fundamental to American society and its way of life. The courts have recognized the importance of political signs as an effective and available means of expressing personal political opinions for over 200 years. There are already many restrictions on political signs. They are not to be posted in the right-of-way, not to be over ten feet in height, not on residential property, and they are not to be greater than six square feet in area. The proposal before the council imposed further restrictions. What will the restrictions be tomorrow? Recently, color restrictions have been placed on buildings. They may only be painted with earth tones. She asked if those restrictions will soon be applied to signs and if so, will the people be forced to change the red, white, and blue flag to dusty rose, buff and azure?

She said democracy is not a cordial process. It is messy. By its very design, it is based on confrontation and vigorous public debate. Increased restrictions on the size and height of political signs will further reduce public awareness and participation by the citizens in a political process. If the intent of the proposed changes is to reduce messages with which someone might disagree, the risk is that the principals of democracy will be eroded. However, she did not believe that a dislike of confrontation was the reason they were discussing greater restrictions on political signs. She feared that it was something far more trivial. The proposal appeared to be a misdirected attempt by an elite group to reduce visual clutter by abridging the peoples' most fundamental freedom. Some people in the city feel that a tidy countryside is more important than the single greatest virtue of the country, its freedom. She asked the council not to restrict that freedom and to vote no on that amendment.

Ed Weiss, said it seemed that every year the same issue of signs comes up. He thought the previous two speakers had brought out some wonderful points and he could not expand on them. Signs carry restrictions on size, location, and placement. He asked if there would be restrictions on what they say. Every sign has a

purpose, whether it be for business to bring in more people and add to the revenues that go not only to small business owners but also to the community by way of taxes. Political signs are the kind of signs that helped get each and every one of the council members elected. The council knows how hard it is to get those signs made, put up, taken down, how much they cost and how much it costs to make the different sizes.

Mr. Fitzgerald's suggestion that the proposal be sent to the sign code committee was the best Mr. Weiss had heard. He did not think anyone wanted to restrict speech or other freedoms and they did not want to say that government is the only one who can have a good sign.

He recently saw an electronic sign go up at the corner of Stone and Speedway for Pima Community College. It was nice to see, it puts out a lot of different messages, there was a Christmas message up for awhile, and a message about the University of Arizona Wildcats occasionally flashes. Electronic messages do work, but they should not work only for the government.

Political signs are freedom of speech. He should not be told that he could only have a sign of a certain size in his yard, especially when it does not conform to the natural size of the materials in the first place. It is a waste of money if the size is restricted and limited to a household community. He urged the council to reject the proposal and send it back to the sign code committee. It should not be about blending in and restricting freedoms. He hoped the council would choose wisely.

Ann Charles, said she was not speaking as an idealist, as others had, but as a pragmatist. Her concerns about ordinance no. 9806 came from having served on the sign code committee and considering air inflatable signs. When the members looked at issues involving air inflatable signs, it became very apparent that the city does not have the ability to enforce current laws. Two people are charged with looking at the entire city and deciding what is and is not in compliance and the process they described was one of extreme frustration. There were not enough people to enforce the current sign code laws, and when they are enforced, the process is such that people say they are sorry, they will take the sign down, or whatever. Ultimately, what happens is if someone continues with the violation they end up in front of a magistrate and what staff described is that at that point if they tell the magistrate they are sorry, the magistrate dismisses the citation and they start all over again.

Ms. Charles was concerned that instead of looking at new laws or expansion of the proposed revision, she would rather, and she thought most of the citizens would also, the council take a look at current laws and selectively enforce them. Most people are more concerned about things that are in the right-of-way and their removal. If the city has a limited number of people she would prefer that laws that are currently in place be enforced to the fullest extent of the law.

Ed Parker, said he was representing himself and not any organization in the city or the state. He was speaking against further law changes to the *Sign Code* or political signs. He did not care if the city has laws restricting political signs. He does not like political signs, he thinks they are a mess, but he also thinks it is unconstitutional to restrict them. Therefore, he thinks they should be allowed. His concern is that if the city has laws, those laws need to be enforced.

He commended the city council members because during the last city council campaign he did not remember that any candidate had violated the city's sign laws. However, during the last election, which was not a city council election, a large number of candidates violated the law and he called many times to complain, both to the city and to the county and a couple of things would happen when he called. One, the sign stayed up for about two weeks and was then taken down; two, the sign was removed, but the posts stayed up and a couple of days later another sign appeared, or nothing happened. On occasions when nothing happens or action is delayed, the candidate receives the benefit of name recognition with no penalty or consequences of breaking the law, making it worth the risk of violating the code.

Candidates who break the law receive the benefit of name recognition. Candidates who obey the law are at a disadvantage and he thought that was unfair. Either the sign codes should be enforced or gotten rid of and one comment that he did receive from the county was that they do not have the resources to remove the signs. He suggested that if the city is going to enforce the law temporary laborers should be hired to go around and take down the signs and then the city should bill the candidates. He thinks it is unconstitutional to ban signs, but if the city is going to have a law it should be enforced and it would not cost the city anything.

Brent Davis, said he wanted to speak to the issue of political signs and the new provisions relating to the multipurpose facility wall signs and he represented only himself. The proposal for multipurpose facility signs is a *Sign Code* amendment intended to assist the Tucson Convention Center. Normally, he comes before the council saying no more signs, make signs shorter, less visible, et cetera. However, he argues and has argued before the sign code committee that if there is one place where there ought to be signs like that it would be in public buildings and public facilities like the convention center. He understood that an earlier speaker had said the rules should be the same for the public as they are for the government, but people at the El Con Theater get all of the movie information as they stand in front of it and he was sure that was legal. The concept of having a major sign, hidden by a forest of trees and basically for the people at the facility, makes all the sense in the world and he supported that change so that the convention center can grow and offer better service to everyone. It made sense to him that people who are standing in line to purchase tickets should be able to see and read.

Mr. Davis said more important than one sign at the convention center was the thousands and thousands of political signs. Free speech people say the city should be like Mexico, put up billboards, and paint the buildings. If Tucson were like that, the sides of buildings could be painted with "vote for" and candidates' pictures years after the elections are over. Mr. Davis said Tucson does not allow that. It is an issue of free speech and it is an issue of degree. He said if any of the council members asked their staffs what is the number one complaint about signs in the city of Tucson, he thinks it should be A-frames or billboards, he would bet that it is political signs. The city is trashed every election and although most of the sitting council members are bright enough and conscientious enough to follow the *Sign Code*, and he knew one of the previous speakers pointed that out, that cannot be said about a lot of people. He has seen signs in the medians. He thinks George Cunningham plants 18 foot wide signs and grows them in his backyard, they are so prolific, and Mr. Cunningham is a good friend of his.

Mr. Davis said his point was that political signs need to be regulated. They are already regulated. They are not allowed in the right-of-way, et cetera. The issue is one of degree. He said the proposal is for a 16 square foot sign limitation and a height limitation of five feet and asked what is half the size of a sheet of plywood. A 4-by-8-foot sign is half the size of a sheet of plywood. He asked if the council thought the city should be putting up signs that are as big as a sheet of plywood, 4-by-8, 32 square feet. He did not think it was necessary.

If there was only one or two signs, one candidate having one sign somewhere in the city and one candidate having another, and those were the only two that could be put up, then they could both be 50 square feet, but that is not going to happen. Each candidate will have hundreds so the issue is one of degree and he thought the proposal is a very good compromise where no one could put up a sign bigger than 32 square feet, five feet high. He encouraged the council to adopt that and said it would take some guts and some fortitude, and the council has had that in the past.

Mayor Walkup asked if anyone else wished to address the council. There was no one. He asked the council's pleasure.

It was moved by Council Member Leal, seconded by Council Member West, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the council's pleasure.

Council Member Leal thanked everyone who had come to speak and said he thought their comments had been to the point and plumbed the significance of the issues at hand. Regarding electronic signs, he thought sometimes people get overly focused on efficiency and expediency and if that satisfied some pressing overarching need the community has, he thought they could get a little circumspect and myopic in their decision making on whether or not something truly is a good idea. He thought that increasingly the desire and the consequence of having electronic signs is gaining in significance.

It was some 20 years ago when the average American was bombarded by 50,000 advertising messages a day. The streets were not as clogged then as they are now and people did not go as fast as they do now. They were not doing their nails, talking on a cell phone, or reading a newspaper while driving and now, some people would have them reading a plethora of scrolling electronic signs all over the city.

The city has its own reasons for wanting to allow electronic signs. It has tried to craft some legal planning argument that contains geographically in terms of space, configuration, and ownership of land who can and who cannot have one of those, but he thinks in the end they become victims of their own cleverness. He thinks they merely set up the requisite circumstances that allow temptation more than it can be tempted. The private sector simply takes the city to court and says the city does, why can't they. It then becomes prolific.

He thought the council would be engaging in wishful thinking if they deluded themselves into thinking that a judge or jury would necessarily conclude in the same way that the recommendation does, that no, it is clearly just for government. He thought that

was a fool's paradise. He did not think the issue should be sent to the sign code committee, he did not think business should be given the same right, but then, he did not think government should be given the right either because it will backfire. It will degrade the reality of life and put the city further at risk.

Regarding political signs, Council Member Leal noted that the claim that they are a matter of degree had been used quite a bit. However, he had to confess that the degree he was thinking of as he listened was the temperature of the water in the pot that the frog slowly dies in because the change is gradual and over time, the frog is cooked. He thought the issues were political and civil rights. He did not think the council should allow government to be telling people at home when they can engage in political speech. If citizens become that obedient and tolerate that kind of abuse, they do not have representatives, they have masters. He hoped that amendment would not be passed and if it was he hoped as many people in Tucson as possible would engage in civil disobedience and tell the council where to go, and take them to court. That is what the council will deserve for trespassing on democratic freedoms. He said he would not vote for that amendment.

Mayor Walkup asked if there was any further discussion.

Council Member West said she listened to the speakers and she came to this meeting with an open mind on most of the amendments. One of the things about the Tucson Convention Center sign that she had not heard anyone address was usually when signs have a lot of messages it can divert drivers' attention. In fact one time she had an accident because she was looking at a sign and traffic in front of her stopped. She knows that that can happen, but in this case, where there is a kiosk and the sign is not visible from the street it could be allowed. She did not want to say anything on political signs because she thought she had a conflict of interest, but the reference on page three of four, where a property owner might have a home for sale, to ask them to pay \$12.50 is not something the city could enforce and she thought it was foolish.

It was moved by Council Member West, seconded by Council Member Ibarra, for the purposes of discussion, that this item be scheduled for a study session so the council could discuss it in more detail, consider the testimony of the people who had made the proposal, and make some of its own revisions.

Mayor Walkup asked if there was any discussion.

Council Member Ronstadt said he thought there was a perception that the council could act on the amendments as a bundle and he wondered if they could be considered individually. There were four separate ordinances and he did not think anyone was going to move ordinance no. 9806.

Council Member Dunbar noted that there was a motion on the table and asked what Council Member Ronstadt was doing.

Mayor Walkup said the council was discussing the motion.

Council Member Ronstadt said he was trying to lay out a case for the maker of the motion to withdraw it and then the council would discuss the ordinances one by one.

Council Member West said she was willing to withdraw her motion. She thought maybe the council needed more time to look at the proposals, but she was willing to consider them one at a time. It made sense to do that.

Council Member Ronstadt said the first ordinance, which addressed the multipurpose facility signs, had been reviewed by staff and the downtown subcommittee and had a decent amount of support. Ordinance no. 9807 was going to be remanded to the sign code committee, which he thinks is appropriate. Ordinance no. 9808 has to do with real estate signs, the council had had numerous discussions about it and the industry has participated.

It was moved by Council Member Ronstadt, seconded by Council Member West, that ordinance no. 9805 be passed and adopted.

Mayor Walkup asked the city clerk to read ordinance no. 9805 by number and title only.

Ordinance No. 9805

Relating to advertising and outdoor signs; amending Tucson Code Chapter 3, Article V, Section 3-58 by adding new provisions relating to multipurpose facility wall signs and permitting them to include electronic and video features; and declaring an emergency.

Mayor Walkup asked if there was any discussion.

Vice Mayor Scott said she understood that this amendment would not be restricted to governments and asked staff to respond. Would private enterprise be able to have multipurpose facility wall signs under the same circumstances or was it really tailored to just the TCC?

Ernie Duarte, director of development services, said if the amendment was adopted other non-public entities could benefit, provided they meet the definition of a multipurpose facility tied to civic events, cultural events, convention center spaces, et cetera.

Vice Mayor Scott asked if a religious institution, a commercial space theoretically, under those circumstances, if it fell into the same restrictions, might be eligible?

Frank Cassidy, principal assistant city attorney, said that was actually a more difficult question than it sounded like. There can only be one multipurpose facilities district in the city of Tucson because the legislation that creates the ability to create those districts has lapsed. There is only one multipurpose facilities district and that is the Rio Nuevo multipurpose facility district. However, the ordinance would allow those kinds of signs to be placed on a multipurpose facility. Those are basically the TCC and any other development that occurs in connection with the TCC, like the University of Arizona Science Center, which are public buildings and part of what is called the primary component of the multipurpose facilities district. However, another set of uses that also falls within the definition of multipurpose facility is called secondary components. The

only things that can be secondary components are parking facilities, parks, and commercial facilities that support the primary component. He said there is some softness in the definition and those facilities, whether they are primary or secondary components, have to be located within what is called the multipurpose facility site and that site is the geographic area downtown, up Broadway Boulevard, the El Con Mall, and Park Mall. If someone is out of the site, they cannot have one of the signs, whether they are a public building or private building. If they are outside the site, they cannot have one. If they are in the site and they are a commercial facility that arguably supports the TCC and its primary component, they could have one as long as they meet the other requirement that the sign cannot be visible from a right-of-way or from private property, or can only be incidentally visible.

Having said all of that, Mr. Cassidy said yes, it would be possible for commercial facilities within the site to fall within the definition under the secondary component. However, it would not be possible for a church because it would not fall within the definition of secondary component. Although it has cultural activities the cultural activities and artistic activities can only go with the primary component and the primary component has to be publicly owned. It is very confusing and the council could see why staff just said to refer to the definition, it was much easier than putting all of that in the provision.

James Keene, city manager, said he thought the confluence of factors, both the restriction of uses and the district location, and then the standards relating to size, visibility and those things, have an effective limitation that is much more restrictive. In answer to the vice-mayor's question, he said that did not mean it would only default to a governmental entity being able to put one up. He thought the council would see, essentially, a very restricted area, pretty much in the downtown. There could be areas that are within the district that might be a possible provider of the sign. However, because of the visibility from right-of-way and all of those kinds of things, the fact that Tucson is not a walking town, it is a roadway town, they were really looking within the core of Rio Nuevo and possibly a couple of other locations.

Mayor Walkup asked if there was any further discussion.

Council Member Ibarra said he understood Mr. Cassidy's definition and asked if El Con and/or Park Mall could put up a wall sign.

Mr. Cassidy said he thought so.

Council Member Ibarra asked if the Radisson, which is downtown, could put up a sign.

Mr. Cassidy said as long as it met the visibility requirements, yes it could.

Michael House, city attorney, said if they were talking about the malls putting these types of signs up they could not be out at the right-of-way, directed at the public travelling the streets because the amendment would not allow that. It was not something to be viewed by people off of the property.

Mr. Cassidy said the signs have to be pedestrian oriented no matter where they are.

Mayor Walkup asked if there was any further discussion.

Council Member Dunbar said Park Mall and El Con would be allowed to have the signs because they are in fact in the district, but Tucson Mall would not be allowed to have one because it is not in the district. She asked where the question Council Member Leal raised came from.

Council Member Leal said that would be why there would be a tendency or desire to sue the city.

Council Member Dunbar said she could see Tucson Mall wanting to sue because El Con and Park Mall would have a distinct advantage. She asked if the proposal needed to be sent back to the sign code committee. She supported ordinance no. 9805, but she could see where in the future the city could be sued by private business. Could there be an amendment to Council Member Ronstadt's motion to send the proposal back to the sign code committee for further study and recommendation on how to incorporate those types of signs for private businesses, where appropriate, that are not located in the facilities district?

Council Member Ronstadt said one of the things that had been repeated several times, and it was an important point, was that these signs are not intended for people driving down the street. They are intended for people who are at the facility, walking around the facility, getting information and directions. He thought the argument that people would sue the city because they could not have the signs was invalid because the assumption was they want the signs to advertise on the streets when in reality they are intended just for information around a multipurpose facility, whether it be Park Place, the convention center, or whatever. They are not signs that are meant to advertise products, services, or facilities to people driving by. Council Member Ronstadt was reluctant to add the amendment to the motion. It ought to be separate and discussed by the sign code committee. If Tucson Mall wants an electronic sign within their facility the only thing the proposal granted the TCC, Park Place, El Con, the science center, or any other public or private facility within the district was an onsite facility sign. He is generally at odds with Mr. Davis on sign issues and if he says to move forward, it was good to go.

Mayor Walkup asked if there was any other discussion.

Vice Mayor Scott said she thought a philosophical question had been raised and asked if a governmental entity had the legal right to say that certain signs can go into a geographic area and not be allowed to another entity that is not within that geographic area. She presumed that the very intelligent staff had accommodated that thought and said the signs could be allowed within a prescribed area, but not allowed in other areas and stand in court very well. She asked if that was a good assumption.

Mr. Cassidy said yes.

Mayor Walkup asked for a roll call on the motion to pass and adopt ordinance no. 9805.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: Council Member Leal

Absent/Excused: None

Ordinance no. 9805 was declared passed and adopted by a roll call vote of 6 to 1.

It was moved by Council Member Ronstadt, seconded by Vice Mayor Scott, to remand ordinance no. 9807 to the citizens' sign code committee.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

The motion carried by a roll call vote of 7 to 0.

It was moved by Council Member Ronstadt, seconded by Vice Mayor Scott, that ordinance no. 9808, option B, be passed and adopted.

Mayor Walkup asked if there was any discussion.

Council Member Dunbar said she thought the council should look at options A and B because if option A was not adopted and someone put their house up for sale they would have to pay a fee of \$12.50. That was the agreement with the realtors. She said the council should be moving item A and B and she wanted to make an amendment because if options A and B were adopted and there was no amendment, if a person put their house up for sale, but had moved out of it, and their relatives were handling the transaction, they would have to pay the \$12.50 fee because they were not living in their home.

Council Member Ronstadt withdrew the motion.

Council Member Dunbar asked if she was right.

Mr. Cassidy said what Council Member Dunbar was saying would not have been covered in option A because it also had an owner occupied limitation. There was an intent to allow an owner occupied or recently passed owner occupied owner to get the exemption. It was an oversight when the draft was prepared.

It was moved by Council Member Dunbar, seconded by Council Member Ibarra, that ordinance no. 9808 be passed and adopted with options A and B, as proposed by

staff and recommended by the sign code committee with the following revisions: "That the fee exemption also be applied to an owner occupied display of real estate for sale and real estate directional signs for the sale of a single family residence for the purpose of this exemption. An owner occupant is a natural person who both owns and occupies or previously occupied for a period of at least one year immediately prior to sign placement, the single family residence the subject of the for sale sign."

Mayor Walkup asked if there was any discussion.

Council Member Leal asked in the situation where the person is not living in the residence, maybe they are living in an apartment in town, or they've been transferred, is it only if there is a family member handling the transaction?

Council Member Dunbar said no. The residence needs to be owner occupied, they have to have lived in it so they would not have to pay the \$12.50.

Council Member Leal asked what percentages of houses that are sold in Tucson would qualify for the exemption. He said it seemed that most of them would. If a person has moved out of their house and moved into another house or an apartment and they are having someone sell the house for them, isn't that the situation where most houses are for sale?

Mr. Cassidy said that was an excellent point, which is why when the exemption was drafted there was a second part of the clarification that suggested an amendment that said owner occupied does not mean and cannot mean the agent or broker of the owner occupant.

Council Member Leal asked if that stipulation was still in the proposal.

Mr. Cassidy said that was part two of his suggested language.

Council Member Dunbar continued with amendments to ordinance 9808: "The real estate sign exemption shall not apply to a real estate agent or broker acting on behalf of an owner occupant".

Mayor Walkup asked if there was any discussion.

Council Member West said she had constituents who live on one side of town and own another house across town and if they decide to sell the house they do not live in they would have to \$12.50 because they do not live in it. She asked if that was right.

Council Member Dunbar said that is what is currently on the books.

Council Member West said she would vote against the motion.

Council Member Dunbar said the way the code is currently written, if a person puts their house up for sale by the owner, they have to pay a \$12.50 fee. If ordinance no. 9808 was passed with her amendments that would be removed. The ordinance is complaint driven. There is no way unless one or two people, who work in the sign department, drive

by and see that a house is for sale, that it can be enforced. It is compliant driven and the amendment tried to fix what Council Member West just talked about.

Mayor Walkup asked the city clerk to read ordinance no. 9808.

Ordinance No. 9808

Relating to advertising and outdoor signs; amending the Tucson Code, Chapter 3, Article III, Section 3-27; adding a real estate sign fee exemption for a property containing up to four residential units where at least one unit is owner-occupied; and declaring an emergency.

Kathleen S. Detrick, city clerk, asked for clarification on the motion. She thought it was to adopt ordinance no. 9808 with options A and B. She asked if they were not talking about just option B.

Mr. Cassidy said it was okay to adopt options A and B because option B included option A. Option A was only for a single family residence and option B was for a single family residence, duplex, triplex, up to four units.

Michael House, city attorney, said for clarity he thought they were talking about option B.

Mayor Walkup asked if Council Member Dunbar wished to clarify that the motion was to pass and adopt ordinance no. 9808, option B.

Council Member Dunbar said yes, and Council Member Scott seconded.

Mayor Walkup asked for a roll call on the motion to pass and adopt ordinance no. 9808, with option B and the amendments read by Council Member Dunbar.

Upon roll call, the results were:

Aye: Council Members Ibarra, Dunbar, Leal, and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: Council Member West

Absent/Excused: None

Ordinance no. 9808, option B, amended to read: "That the fee exemption also be applied to an owner occupied display of real estate for sale and real estate directional signs for the sale of a single family residence for the purpose of this exemption. An owner occupant is a natural person who both owns and occupies or previously occupied for a period of at least one year immediately prior to sign placement, the single family residence the subject of the for sale sign. The real estate sign exemption shall not apply to a real estate agent or broker acting on behalf of an owner occupant," was declared passed and adopted by a roll call vote of 6 to 1.

Council Member West asked what happened to ordinance no. 9807.

Council Member Ronstadt said it was sent back to the sign code committee.

Council Member West said she thought the proposal regarding political signs was remanded.

Vice Mayor Scott said no, it died a miserable death for lack of attention. She asked if the council had to say anything about it.

Mr. House said no, items that are not acted upon simply die.

Kathleen S. Detrick, city clerk, summarized to ensure that her records were correct that the mayor and council voted 6 to 1 to pass and adopt ordinance no. 9805. The mayor and council did not address ordinance no. 9806. The mayor and council remanded ordinance no. 9897 to the sign code committee and passed ordinance no. 9808 with amendments.

Mayor Walkup said that was correct.

12. PUBLIC HEARING: *RINCON SOUTHEAST SUBREGIONAL PLAN* AMENDMENT, MAP DETAIL #9, WILMOT/JULIAN WASH

Kathleen S. Detrick, city clerk, advised that staff had received a written request had been received from the applicant that this item be continued to February.

Mayor Walkup announced that city manager's communication number 37, dated January 13, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing on a proposed amendment to the *Rincon Southeast Subregional Plan*. The applicant is DRE and Associates on behalf of KB Home, Inc. He asked if the applicant wished to make a presentation.

The applicant's representative said he had requested a continuance and if that request was not granted he would prefer to make and have staff make a precise presentation to the council.

Mayor Walkup said the case had been advertised for a public hearing, he had received a written request from a person who wished to speak and afterward, the hearing would be closed and the case duly considered. He called on the speaker.

Major Gary Carruthers, 355th Wing Chief for Public Affairs at Davis Monthan Air Force Base, speaking on behalf of Colonel Paul Shaeffer, 355th Wing Commander, thanked the council for the opportunity to speak and said David Sumner, Base Community Planner from the 355th Civil Engineering Squadron, was also present. Major Carruthers said the base appreciated the recent actions by the mayor and council to protect development in the base's southeast approach-departure corridor for the next two years while the joint land use study is underway. He wanted to convey the position of Davis Monthan on the request to amend the *Rincon Southeast Subregional Plan* to allow

residential uses on a 100-acre site currently designated for commercial and industrial use.

The base's position was outlined in a letter from Colonel Shaeffer to the city of Tucson Planning Director dated June 20, 2002. That position has not changed and the comments in the letter were still valid. While they recognize that the proposed amendment to the *Rincon Southeast Subregional Plan* is outside the approach-departure corridor and outside the 65-decibel noise contour as defined by the current air installation compatible use zone, the site is within the 65-decibel hypothetical noise contour that was released to the city of Tucson last year. These hypothetical contours were released at the request of the city for their use in future planning and zoning around the base.

The ACUZ, which the Department of Defense uses to make recommendations to local governments, discourages residential development within the 65-decibel contour. He also thought it was important to understand the rationale for the existing zoning and area plan designation for the area in question.

The subregional plan supports commercial and industrial uses in part to be compatible with the Davis Monthan flight operations and attempts to balance future growth for the area with sound planning constraints such as limiting future residential development in areas surrounding the base. Davis Monthan is aware of the great need for affordable housing in the Tucson area, however, it is imperative that new housing is located appropriately and that is the major reason they are concerned about the subject request to allow residential uses on the subject parcel. They are committed to being good neighbors and they are aware that the city of Tucson has to balance appropriate land use development with the base's flight operations and the need to preserve the mission viability of the installation.

Mayor Walkup asked if anyone else wished to address the council. There was no one. He asked the council's pleasure.

It was moved by Council Member Leal, seconded by Council Member Ronstadt, and carried by a voice vote of 7 to 0, to continue this request to the council meeting of February 10, 2003, at or after 7:30 p.m., in the mayor and council chambers, 255 W. Alameda.

13. PUBLIC HEARING: (C9-85-95) 22ND STREET/PANTANO PARKWAY ANNEXATION DISTRICT, C-3 ZONING, CHANGE OF CONDITIONS

Kathleen S. Detrick, city clerk, said there was a written request from the owner of the property and the prospective purchaser asking that this hearing be continued to January 27, 2003, meeting.

Mayor Walkup asked the council's pleasure.

Council Member West said a letter had been received asking that this item be continued to the first meeting in February.

It was moved by Council Member West, seconded by Council Member Ibarra, that this item be continued to the first meeting in February.

Ms. Detrick said the written request she had asked that it be continued to January 27, 2003.

Council Member West said she had looked at the wrong case.

It was moved by Council Member West, seconded by Council Member Leal, and carried by a voice vote of 7 to 0 to continue this case to January 27, 2003.

Mayor Walkup asked if there was any discussion.

Ms. Detrick clarified for the record that the motion was to continue this public hearing to the mayor and council meeting of January 27, 2003, which will be held at 7:30 p.m., at the Tucson Convention Center, Maricopa/Mohave Rooms, 260 S. Church.

The motion was declared carried by a voice vote of 7 to 0.

14. PUBLIC HEARING: *RINCON SOUTHEAST SUBREGIONAL PLAN AMENDMENT, MAP DETAIL #4, HARRISON/I-10 (PANTANO ROAD-VOYAGER ROAD)*

Mayor Walkup announced that city manager's communication number 39, dated January 13, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing on a proposed amendment to the *Rincon Southeast Subregional Plan*. The applicant is Michael Marks of MJM Consulting Incorporated on behalf of Voyager RV Resort, LLC. He asked if the applicant wished to make a brief presentation.

Michael Marks, MJM Consulting, said they were pleased with the recommendation by staff, by the commission that voted unanimously, and by the city manager for approval of the plan amendment as presented and asked that the council ratify same.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour and asked speakers to limit their presentations to no more than five minutes. He asked if anyone wished to address the council. There was no one.

It was moved by Council Member Ibarra, seconded by Vice Mayor Scott, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the council's pleasure.

It was moved by Vice Mayor Scott, seconded by Council Member West, that resolution no. 19481 be passed and adopted.

Mayor Walkup asked the city clerk to read resolution no. 19481 by number and title only.

Resolution No. 19481

Relating to planning and zoning; amending the *Rincon Southeast Subregional Plan*, Pantano-Voyager Road, Map Detail 4, Harrison/I-10; and declaring an emergency.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution no. 19481 was declared passed and adopted by a roll call vote of 7 to 0.

15. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

Mayor Walkup announced that city manager's communication number 25 would be received into and made a part of the record. He asked if there were any personal appointments by any member of the council. There were none.

16. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue. He advised that speakers would be limited to five minute presentations. He received a number of written requests to speak and would call on those people in the order that they were received.

A. Consent Agenda – Item E

Elezebeth Cameron, said the ordinance the council had approved had just given every owner that has a vicious animal more time to hide. It gives them more time to change the name of the owner, change ownership, and the dogs will get lost in the shuffle. She said she had only 15 citations of about 25 that were issued to her neighbor, who uses pit bulls like weapons, who has trained them and cannot seem to be caught. They keep changing the owner throughout the household until they find someone who cannot be found guilty of having the dog and then they go to court they say it is not their dog, or they do not know where it is. In the meantime she is assaulted, her two-year-old has been assaulted, her dog has been bit through the fence. It is fence biting and yard damage on a regular daily basis. They are not prosecuted as it is and the ordinance just adopted gives them more time to hide their dogs. In this particular situation the man said he was going to take the dog to a friend and hide him, which he did. At night when Pima Animal Control is not working the man brings the dog to the neighborhood.

She has a restraining order that says the man cannot be within 1,000 feet of her, but he can visit his mother's house 100 away. He brings the dog at night, when video cameras do not work and when animal control is either too busy or not there. The council had just given that man more time. She had citations, which she showed the council and said they were issued to one family, not 15 different people. She reiterated that it was one family, eight pit bull dogs, maybe nine, she had lost count, because they get one, they do not register it or vaccinate it because it costs \$75. The dogs are not neutered. The ordinance gives the people more time to hide the animals and pass off ownership so no one can be prosecuted. Of the 15 citations she had the people had gotten off on each one. They say things like they were not properly served, it is not their dog, it is their brother's dog, they're mother's dog, or their other brother's dog. She hoped the council realized what it had just done. She votes, she has a dog and she will remember.

B. Vicious Dog Ordinance

Mardi Hadfield, said she agreed with Ms. Cameron. She has gone down different streets to avoid animals that have attacked her dog and she is still attacked. Pima Animal Control does not do anything, the police do not do anything, and the council keeps making her a victim. The city is not safe for her anywhere. She said her dog is not a pet. Her dog is her eyes. When she cannot get a bus because the bus driver goes by and leaves her, she has to wheel her chair home on treacherous roads and sidewalks and until three days ago she did not have a dog to help her. When she called for a police officer to help her because a car almost ran her down they said sorry, they could not do anything for her except call a taxicab. She said her wheelchair does not fit into a cab, it does not fold up, so she was left to fend for herself and find her way home.

She would have to wheel herself home after this meeting because there is no bus service this time of night. She asked if she would be safe, would some dog on the way attack her dog? Would this be repeated constantly? She said the council is liable. It does not enforce the law. There are laws on the books and the council keeps adding more and more, but they do not enforce them.

She has been in court and the last time her veterinarian bills were not even reimbursed. She sees people plea bargain out, they do not pay fines, they do not register their animals. She registers hers and she follow all of the laws, but she is a victim of people who do not and the council does nothing. She reminded the council that she is in federal court with the city because the council did not see that the laws were enforced they owe her for her dog. If her dog is disabled they will owe her for the next one and they cost \$30,000 each.

C. Pima Animal Control

Lisa DeLong, said she does not live at Tucson House anymore, so she is not a victim there. However, she does live in other public housing where she is a victim, because she has neighbors who like to place in her new service dog. Her gripe was the fact that the council wanted to change the law and they do not even have people that will enforce it. She is a victim of the \$75 licensing law. She went to court and the prosecutor stood there and said no, it was \$80. She told them no, it was \$250 if they read the law. He kept arguing with her and finally walked out of the room, went back to the judge and said no, it was \$80. Ms. DeLong is actually a victim of Ms. Cameron's neighbor, but she is more of a victim and she has actually been violated by the city, the police department, and animal control.

The council wants to keep changing its rules and laws, adding things and deleting things, and what is on the books is not even being enforced. The prosecutors do not know what the law is, they do plea bargain, and it took a whole year for them to prosecute Ms. Cameron's neighbor. Even then, all they got was that the dog was loose, off leash. That is the only thing the woman was prosecuted for and it is the only thing the city got, \$80 for her eyes. Her eyes are worth more than \$80 and that money did not go to her to compensate her for her loss. It went to the city for their stupidity in the situation. She does have a new dog and she is still waiting for the check that replaces the first dog. The city still owes her \$35,000 for her sight assist dog. What the council had done is make her a bigger victim.

She has to drive home and she actually lives a little further, up by First Avenue and Ft. Lowell and the council has made her a bigger victim. There is no ride for her. She waited for the item and there was no discussion, the council did not want to hear from the citizens. She said there is a reelection and she reminded the mayor that they are in federal court. She is waiting for her \$35,000 check to replace her first dog. It was not just an animal - not just a dog. She knew Mayor Walkup and Council Member Dunbar owned dogs. She would tell them right now, and they could arrest her right now, but if his dog or Council Member Dunbar's dog or any other dog attacks her new dog and she has to use physical force she will. If that is a gun, whatever, beat the dog into the ground with her white cane, she would.

Mayor Walkup asked the city attorney to make note of Ms. DeLong's comments and called on the next speaker.

C. Agenda Item #11 – Proposed Amendments to the *Tucson Sign Code*

Brent Davis, said he could not resist saying something about political signs and Council Member Dunbar's remarks, which he applauded. She said the ordinance having to do with houses for sale, was a complaint driven solution. He said she could call him and tell him that no one has complained about political signs. Complaint, what a wonderful thing to say and reaction. He asked her to check her e-mail, the letters to the editor and the editorial articles. He did not mean to put her on the spot that way, but asked her to call him and talk about complaint driven, which is a wonderful statement and should be applied to political signs.

17. ADJOURNMENT: 9:34 p.m.

Mayor Walkup announced that the council would stand adjourned until it's next regularly scheduled meeting to be held on Monday, January 27, 2003, at 7:30 p.m., in the Maricopa/Mojave Rooms of the Tucson Convention Center at 216 N. Church Avenue, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the city of Tucson, Arizona, held on the 13th day of January, 2003, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

OFFICE SUPERVISOR

KSD:DA:DP:mjv
pr agnst tp:ss